



## The Conference on Safe Transportation of Hazardous Articles, Inc.

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U.S. Department of Transportation

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Re: Docket No. RSPA-2002-13658 (HM-215E); Comments on notice  
of proposed rulemaking

Dear Sirs:

The Conference on Safe Transportation of Hazardous Articles, Inc. ("COSTHA") hereby offers its comments on the notice of proposed rulemaking (NPRM) published in the *Federal Register* on December 3, 2002 [67 FR 72034] under Docket No. RSPA-2002-13658 (HM-215E) and entitled "**Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions**". These comments address certain amendments proposed in the NPRM *other than* those relating to matter incorporated by reference and which have already been implemented in a final rule published on January 8, 2003 [68 FR 1013].

COSTHA is a non-profit organization representing manufacturers, shippers, distributors, carriers, freight forwarders, trainers, packaging manufacturers and others associated with the hazardous materials transportation industry. In addition to promoting regulatory compliance and safety in hazardous materials transportation, COSTHA assists its members and the public in evaluating the practicality and efficacy of laws, rules and regulations for the safe transportation and distribution of hazardous materials. Since many COSTHA members are directly involved with the offering for transport and transport of a wide variety of hazardous materials, COSTHA has a direct interest in this NPRM.

As a general comment, COSTHA supports the amendments proposed in the NPRM, and welcomes and supports RSPA's continuing efforts to maintain alignment between the Hazardous Materials Regulations and the relevant international transport recommendations and regulations. Such harmonization is critical in today's global economy, and without a high level of harmonization in transport regulation to facilitate international trade in dangerous goods COSTHA's members would be placed at a serious disadvantage.

The NPRM invites comments on a number of proposed amendments to the Hazardous Materials Regulations ("HMR", 49 CFR Parts 171-180) intended to improve harmonization between the HMR and international recommendations and regulations, and for other purposes. COSTHA members have reviewed the NPRM, and while supporting the proposals in principle have identified several areas where full harmonization has not been achieved, where inconsistencies remain, or where the regulations could be improved. Comments on the issues identified in our review are offered below. For each comment offered, the relevant regulatory provision in the NPRM is identified, an explanation is provided of the issue of concern, and, where appropriate, specific action is suggested to address that concern.

#### Section 172.102.

The NPRM proposes no amendment to the current text of Special Provision 134, which is applicable to the entry "Battery-powered vehicle", UN 3171 - the entry under which vehicles powered *only* by batteries are transported. As worded, the special provision defines the applicability of the "Battery-powered vehicle" entry to include vehicles powered *only* by "wet batteries or sodium batteries". On the other hand, proposed new Special Provision 157, applicable to the entry "Vehicles, flammable liquid powered" (UN 3166) under which hybrid electric vehicles (HEVs) would be transported, would clearly state that the entry includes vehicles powered in part by "wet, sodium or lithium" (emphasis added) batteries. To ensure consistency with existing UN Special Provision 240 applicable to UN 3171 and with proposed new Special Provision 157 applicable to UN 3166, COSTHA believes Special Provision 134 should be amended to include also a reference to lithium batteries, so that it is clear that vehicles powered *only* by lithium batteries are covered by UN 3171. For these reasons, COSTHA requests that Special Provision 134 be aligned with the corresponding UN Special Provision 240 by adding a reference to lithium batteries.

#### Section 172.202.

COSTHA has comments on various of the proposed amendments affecting this section.

*Paragraph 172.202(a)(2).* From a purely editorial point of view, the third sentence in the proposed paragraph appears to restate information already contained in the second sentence and is, therefore, redundant. It is suggested that the third sentence be removed.

*Paragraph 172.202(a)(5).* The proposed text clearly states that abbreviations may be used for units of measure, but does not address their acceptability for other purposes - in particular for packaging types. The Uniform Hazardous Waste Manifest (EPA Form 8700-22) required by the Environmental Protection Agency (EPA) for the shipment of hazardous wastes currently requires the type of packaging to be indicated using specific abbreviations (e.g., “DM” for metal drum). However, the proposed wording for § 172.202(a)(5) would not appear to permit this. Accordingly, it will be impossible for offerers to comply with both the EPA requirements and the HMR requirement in this regard. Therefore, it is proposed that the wording be modified to permit the type of packaging to be abbreviated, or at least to allow this practice for purposes of preparing the EPA Hazardous Waste Manifest.

Also in relation to this paragraph, the sentence “[f]or shipments of packages in an overpack or transport unit...this information must be shown for each hazardous material in each package...” is confusing in that it appears to contradict the basic provision that the total quantity be indicated only once for materials covered by the same proper shipping name and UN number. As worded the sentence appears to require a total quantity for *each* package - even when all the materials are described by the same proper shipping name and UN number. Furthermore, no similar requirement appears in either the UN Recommendations or IMDG Code, and even in the ICAO Technical Instructions it is required *only* that the shipping paper provide “an indication that an overpack has been used, when appropriate.” To eliminate this contradiction, and to ensure harmonization with the UN Recommendations and IMDG Code, it is suggested that the sentence in question be removed.

#### Section 172.315.

The specification in paragraph (a) for the proposed new limited quantities marking does not specify color (as is *also* the case with the corresponding marking in the UN Recommendations and IMDG Code). For this reason COSTHA assumes the marking may be of any color provided sufficient contrast is provided against the background upon which the marking is displayed. It is requested that this understanding be confirmed, either in the proposed marking requirement itself or by an appropriate indication in the preamble to the final rule.

#### Section 172.323.<sup>1</sup>

As a general comment, COSTHA seriously questions that this new marking will have any positive impact on safety in air transport. We believe it is unnecessary and redundant, and that the marking is duplicative in its effect of the certification statement already required by the HMR to be provided by the offerer on the shipping paper. Nevertheless, we recognize that a similar marking

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<sup>1</sup> From the purely editorial point of view, COSTHA notes that a section 172.323 already exists having been adopted under the Docket No. HM-226 final rule [67 FR 53135]. A similar conflict may exist with regard to §§ 173.27(e)(5)(i) and 175.30(a)(5).

requirement has already been included under the ICAO Technical Instructions on the basis of a proposal submitted by the United States' member of the ICAO Dangerous Goods Panel.

At a minimum, therefore, COSTHA respectfully requests that the HMR provision, if adopted, be aligned with the corresponding provision in the ICAO Technical Instructions in terms of its meaning and scope. In the ICAO Technical Instructions, the marking certifies compliance of the "packaging" with all applicable requirements. The proposed HMR requirement, on the other hand, refers to compliance of the "package" with all applicable requirements. In the preamble to the NPRM, it has been stated that the scope of the certification averred by the markings would be so broad as to include requirements such as the correct classification of the materials inside the package, and any limits on the quantity of materials that may be contained in inner packagings and/or the package. Clearly, this interpretation is of far broader scope than the scope of the ICAO provision applying only to the "packaging" - and of such broad scope as to be fully duplicative of the already-required shipper's certification statement. COSTHA does not believe that simply adding a duplicative requirement will in any way enhance air transport safety. Moreover, such a fundamental difference between RSPA and other national competent authorities in interpretation of the same marking requirement can only lead to chaos in international transport of dangerous goods by air, and impose far greater responsibilities on persons applying the marking in the United States than are imposed on persons applying the same marking outside of the United States. This is clearly wrong, and not in the interests of harmonization or of facilitation of international transport.

For these reasons COSTHA requests that this marking provision not be adopted at this time, and that the intent of, and even the basic need for, the marking be reconsidered at the ICAO Dangerous Goods Panel in order to ensure that if such a requirement is imposed, there is a clear, universal understanding of the intent and meaning of the marking. If RSPA does not accept this suggestion, COSTHA at a minimum requests that the wording be aligned with the corresponding wording in the ICAO Technical Instructions by making the certification implicit in the marking applicable to compliance of the "packaging" to the applicable requirements, rather than the "package".

In addition, we note that paragraph (c) excepts certain packagings containing dry ice from this marking requirement. COSTHA questions whether a similar exception exists in the ICAO Technical Instructions, and, as stated above, believes the applicability of any DOT requirement that should be adopted should be the same as the applicability of the corresponding ICAO requirement.

#### Section 173.27.

As proposed, the absorbent material requirements in paragraph (e) would apply to all liquid hazardous materials "other than Class 9", whereas the corresponding provision in the ICAO Technical Instructions (see Part 4; 1.1.10.1) applies to "liquids in Classes 3, 4 or 8, or Divisions 5.1, 5.2 or 6.1". COSTHA believes that this difference in wording would lead to different applicability

of the absorbent material requirements under the HMR as compared to the corresponding ICAO requirements. For example, the requirements as proposed in the HMR would appear to apply to Division 6.2 and Class 7 materials, whereas the corresponding ICAO provision clearly does not. In addition, for example in the case of Division 6.2 materials, specific absorbent material requirements apply which could conflict with those in the proposed § 173.27(e). For these reasons, COSTHA requests that the wording of proposed § 173.27(e) be aligned with the corresponding provision in the ICAO Technical Instructions by specifically indicating its applicability to “liquids in Classes 3, 4 or 8, or Divisions 5.1, 5.2 or 6.1”.

#### Section 173.161.

COSTHA has noted that there is an inconsistency between the packaging requirements for “chemical kits” and “first aid kits” (UN 3316) in paragraph (b) of this section, as compared to the provisions in proposed revised Special Provision 15. Special Provision 15 states that chemical kits and first aid kits are excepted from the requirement to use specification packaging (without regard to the mode of transport involved), whereas proposed § 173.161(b) would require specification packagings for chemical kits and first aid kits when transported by air. This is inconsistent with the international regulations which allow chemical kits and first aid kits to be transported in non-UN-standard packagings when they otherwise conform to the requirements for limited quantities. Since it is stated in the preamble to the NPRM (see page 72042) that the proposed change to § 173.161 was intended to make the requirements for chemical kits and first aid kits “consistent with international standards”, COSTHA is of the view that the text in Special Provision 15 more closely reflects DOT’s actual intent. Therefore, COSTHA requests that the wording in proposed § 173.161(b) be aligned with that in Special Provision 15 to the extent that chemical kits and first aid kits would be authorized for transport in non-specification packagings in any mode of transport, including air transport.

#### Section 173.220.

The NPRM proposes no amendments to Section 173.220 in relation to its provisions for batteries that may be installed in vehicles. However, nowhere in this section is it clearly stated that vehicles may have lithium batteries installed, this notwithstanding the specific reference to lithium batteries in the proposed new Special Provision 157. Rather, reference is made only to “wet” batteries (see §§ 173.220(a)(2) and (c)). This is inconsistent with the new Special Provision 157 as well as with Special Provision 134 (both as it is currently worded and as proposed herein to be revised), each of which specifically addresses other types of batteries, and these inconsistencies could lead to confusion in interpretation and application of the provisions of § 173.220. Therefore, COSTHA requests that the text in Section 173.220 be appropriately aligned with that in the proposed new Special Provision 157 to clearly indicate that, in addition to “wet” batteries, the section applies equally to vehicles containing installed sodium or lithium batteries - for example, by amending § 173.220 as follows:

- 1) Revise paragraph (a)(2) to read:

“(2) It is equipped with a wet electric storage battery other than a non-spillable battery, or with sodium or lithium batteries; or”

- 2) Revise the heading and first sentence in paragraph (c) to read:

“(c) *Battery powered or installed.* Batteries must be securely installed, and wet batteries fastened in an upright position. \* \* \*”

Section 178.812.

It appears based on the discussion in the preamble to the NPRM that the word “evenly” has been inadvertently omitted from the proposed amendment to paragraph (b) of this section.

Section 180.352.

We note that paragraph (f) would be revised as proposed in the NPRM to include also a reference to records of tests performed on IBCs that have been repaired. It appears, however, that the balance of the text in paragraph (f) has been inadvertently removed (e.g., record retention requirements and period).

In conclusion, COSTHA welcomes the opportunity to comment on the amendments to the HMR as proposed in subject NPRM. COSTHA requests that consideration be given to the foregoing comments in the development of any final rule that may be issued under this docket.

Please do not hesitate to contact me if you have questions or require additional information concerning the foregoing comments.

Sincerely,

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